

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 07-CR-20076-16

MARLIN MORTON,
Defendant.

/

**ORDER DENYING MOTION FOR
REINSTATEMENT OF CONDITIONS OF PRETRIAL RELEASE**

Defendant, through counsel, has filed a second motion to reinstate conditions of pretrial release. In his earlier motion seeking pretrial release, he failed to indicate whether or not the contemplated relief would be agreed to by the government, see Eastern District Local Rule 7.1(a). Defendant now avers that he has consulted with government counsel, A.U.S.A. Noceebea Gordon, and that she has no objection to Defendant's requested relief.

Defendant's bond was cancelled for repeated failures to abide by conditions and restrictions of home monitoring, including returning 45 minutes past deadline on March 11 and March 24, 2007, and being absent from the residence from 1:09 a.m. until 1:52 a.m. and from 2:46 a.m. until 3:56 a.m. on March 25, 2007. On March 29, Defendant was admonished by Pretrial Services that he was in violation as specified above, yet only a few days later, on April 1, 2007, Defendant was absent from 10:36 p.m. until 4:04 a.m. the next morning. Again, on April 6, 2007, Defendant was absent from 8:37 p.m. until 9:14 p.m. and from 10:08 p.m. until 2:23 a.m. the next day.

In Defendant's motion he argues that he "admits some of the violations" –not revealing which ones– but "verily submits" that there were "problems with the tethering system." D's. Mtn., unnumbered p. 2. Pretrial Services, he argues, has "suggested that this system had intentionally been unplugged, but Mr. Morton vehemently contest [sic] this allegation." *Id.* He further argues that there were times, unspecified, that he was "on his property, and within the proscribed [sic] range of the system, yet he learned later that the system indicated he was outside of its range." *Id.*

All of these contentions are mere argument, supported by no facts, and are unpersuasive. Not only does Defendant fail to indicate which of the violations (or "dalliances," as he phrases them) were accurately recorded, none of his argument about "problems" with the system are explained in any way, nor is there any indication how the tethering system could possibly indicate a person being out of its range while the person tethered is still on his residential property. The court cannot imagine how a system that accurately records a Defendant's "dalliances" on some occasions could simultaneously have "problems" leading to false indications of other "dalliances." Defendant's brief is of no assistance in clearing up this mystery for the court.

The court, rather, continues in its earlier belief, based upon the specificity of the Pretrial Services report, that Defendant was repeatedly out and about in the community in the wee hours of the morning, for no legitimate reason, when he was supposed to have been at his residence. In spite of the government's apparent agreement with the objects of this motion, nothing presented here changes the court's opinion in the least.¹

¹ The court takes into account that Defendant submitted a form purporting to be a business property lease related to a car wash business Defendant avers that he has begun.

No condition or combination of conditions are available to the court that would assure the safety of the community and assure the court that Defendant would attend future sessions of court while committing no additional crimes in the meanwhile. Accordingly,

IT IS ORDERED that Defendant's motion for reinstatement of conditions of pretrial release [dkt # 119] is DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: July 23, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 23, 2007, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522